

The difference between a professional association and a regulatory body (Guest commentary)

It seems inevitable that HR is on the path to more regulation

The distinction between a professional association and a regulatory body is one that is not well understood. But it's important to the HR profession and its evolution, and a distinction that may well become even more important in the future.

In HR, professional associations and regulatory bodies are within the same organizations. Although it is possible to think of regulation as one of the things professional associations do, it's actually better to think of professional associations and regulatory bodies as two separate organizations under the same roof.

That's because professional organizations are all about serving the interests of members. That is why they came about in the first place. Professional associations create networking opportunities, publish information of interest to members, conduct research and stage conferences, seminars, and workshops. They have job boards; they pull together affinity programs for members and they lobby on behalf of members' interests.

Regulatory bodies are something else altogether. They set requirements for individuals to enter the profession and for the practice of the profession. They set up and maintain disciplinary processes and processes to evaluate the ongoing competence of members.

I am using the phrase regulatory body in a very broad manner to refer to the whole spectrum of organizational entities that manage the activities listed above. There is a continuum of maturity, however, with respect to professional regulation. Professional associations will often begin by adopting a code of ethics and establishing standards for entry.

The next step is often a designation, which brings into play more elaborate requirements. This is often followed by the introduction of more formal discipline mechanisms. And so, professional associations build their regulatory mechanisms over time.

The big step: True self-regulation

At first, regulation is driven by the interests of the professional association's members.

But then comes the big step — true self-regulation. True self-regulation occurs when a government delegates some of its authority to regulate professions to a professional association or regulatory body. By means of this legislation, the professional organization enters into a deal with the government to regulate the profession on its behalf. The existence of this legislation changes many things.

Governments don't legislate to advance the interests of a particular professional group. Governments legislate to protect the public interest. True, self-regulation confers many benefits to the professional organization, but there is another side to the deal.

In exchange for this delegated authority to regulate the profession, the government expects the association or regulating body will manage the profession "in the public interest." This is where the potential conflict of interest stems.

Two different masters

Professional associations and regulatory bodies serve two different masters. Professional associations exist to serve the interests of members and are accountable to members. Regulators are there to serve the interest of the public and are accountable to the government for living up to the deal defined by the enabling legislation. Indeed, regulatory bodies are really there to protect the public from incompetent or unethical practitioners who may abuse their professional position and not to advance the interests of the profession.

When the regulatory aspects are embedded in legislation, it becomes an entirely new ball game. Now regulation becomes serious, especially because the professional association is accountable to government in this area. As noted earlier, although it is possible to think of regulation as one of the things a professional association does, it is better to think of a professional association and a regulatory body as two separate organizations under the same roof. The two “organizations” have different mandates, different objectives and different measures of success.

Conflict between public, professional interests

It is not that the interest of the public and the interests of the profession are always in conflict — they are not. But there are situations where those interests are different. Regulators set requirements for entry into the profession, which limit the number of individuals who might qualify. Regulators may set all sorts of limits on the behaviour of professionals, which may be burdensome to practitioners. Regulators introduce mechanisms to assure continued competence, which may be seen as burdensome as well. Regulators have investigatory and disciplinary powers, which some members may find intrusive.

Because of the conflict between making decisions in the interest of the public versus that of the profession, governments often require a separation between regulatory body and professional association, but this is not always the case. In some circumstances, such as when a profession is newly regulated, fairly small or the risk of harm to the public is relatively low, the government may allow both the professional association and regulatory body to co-exist as one organization.

Nonetheless, the government expects the public interest to take precedence in making decisions related to regulatory functions. Failure to do so would leave the profession open to losing its self-regulatory status and being regulated directly by the government.

This means that professional associations, and their members, need to understand the differences between the two “organizations” that co-exist within their professional associations. Mechanisms need to be maintained to ensure potential conflicts of interest are identified and managed effectively.

The continuum of regulatory maturity goes from being a set of activities carried out by a professional association, to an organization within an organization to an entirely separate regulatory body. Some would use the term regulatory body to refer only to the last of these. But this may be too restrictive in the sense that the organizations that handle regulatory matters within professional associations can operate as fully functional regulatory bodies in their own right.

HR at different points of maturity across the country

Currently, in HR, the regulatory side of the profession is at different points in the continuum of maturity across the provinces. However, to the extent that maturity of regulatory mechanisms is linked to the overall maturity of the profession, it seems inevitable the HR profession will move in the direction of more regulation.

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